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June 28, 2024

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VIA ECF

Hon. Judge Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

MEMO ENDORSED

Re: Chakma, et al. v. Sushi Katsuei, Inc, et al.

Case No. 1:23-cv-07804-KPF

Dear Judge Failla:

This office represents Defendants in the above referenced matter. I write, together with Plaintiffs' Counsel, to submit a joint letter, including proposed briefing schedules pursuant to the Court's May 24, 2024 Order. The Parties write as follows:

(1) A statement of all existing deadlines, due dates, and/or cut-off dates;

There are no existing deadlines at this moment, other than the Parties' post-discovery conference currently scheduled for July 2, 2024 at 2:30 pm. The Parties are ready to participate in the conference as scheduled, but respectfully request that they be allowed to participate in the conference remotely by video or telephone or any other means at the Court's convenience.

(2) A brief description of any outstanding motions;

The only outstanding motions are (1) Plaintiffs' letter motion seeking Leave to File Amended Complaint to add a third-party individual, Ms. "Maya," filed on May 15, 2024, and Defendants' opposition to the letter motion filed on May 20, 2024. (See, Dkt Nos. 28 and 29), and (2) Plaintiffs' May 23, 2024 letter motion for discovery sanctions.

(3) A brief description of the status of discovery and of any additional discovery that needs to be completed;

The Parties inform the Court that they completed all paper discovery, including party and non-party depositions at this moment, as of June 25, 2024.

(4) A statement describing the status of any settlement discussions and whether the parties would like a settlement conference.

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The Parties have not engaged in a settlement discussion after Plaintiffs conveyed their initial demand in or around October 2023. The Parties wish to consider attending a settlement conference after the Parties' anticipated motions (e.g., class certification motion and summary judgment motion) are heard.

(5) A statement of the anticipated length of trial and whether the case is to be tried to a jury;

The Parties anticipate that the trial will take place three (3) to (5) five days, and the case is to be tried to a jury.

(6) A statement of whether the parties anticipate filing motions for summary judgment, including the basis of any such motion; and,

Plaintiffs' Position:

Plaintiffs' understanding is that the Court wishes to consider class certification briefing prior to any merits based motions. *See* Dkt. No. 30. The Parties proposed schedule for class certification is set forth below. In the event, that the Court will entertain summary judgment briefing at this time, Plaintiffs wish to move for partial summary judgment on (1) Defendants' unlawful use of the tip credit since they did not provide Plaintiffs with any written notice prior to taking that allowance (*see* NYCRR § 146-2.2), and (2) Defendants failure to provide Plaintiffs with notices as required by N. Y. Lab. L. § 195.

Defendants' Position:

Defendants anticipate filing of a partial summary judgment motion 1) dismissing Plaintiffs claims against an individual Defendant and a Corporate Defendant (Ms. Aye-Aye Swe and Royal Katsuei); and 2) dismissing (or at least limiting) the overtime claims under FLSA and NYLL, as some of the Plaintiffs did not work all the days that he and/or she allegedly worked. The basis of the motion is that there is no genuine issue of material facts as Defendants provided documentary evidence, such as Plaintiffs' time record and pay record, and the Parties conducted and completed depositions¹.

(7) Any other issue that the parties would like to address at the pretrial conference or any information that the parties believe may assist the Court in advancing the case to settlement or trial.

The Parties conferred and agreed on the following schedule for class certification briefing:

¹ The Parties are in the process of reviewing deposition transcripts as the last deposition was completed on or around June 25, 2024.

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Plaintiffs' moving brief due on or before: August 2, 2024

Defendants' opposition brief due on or before: August 30, 2024

Plaintiffs' reply brief due on or before: September 13, 2024

We thank the Court for its time and continued attention to this matter.

Respectfully Submitted,

Seo Law Group, PLLC

By: /s/ Diana Seo

Diana Y. Seo, Esq.

Attorneys for Defendants

cc: All counsel of record (via ECF)

In light of Defendants' representation that their tardiness in making certain productions was due to family medical issues, and the parties' indication that fact discovery has been completed pursuant to the amended schedule, the Court finds discovery sanctions are not warranted at this time. Accordingly, Plaintiffs' request for sanctions is DENIED.

Furthermore, upon the application of the parties and in the interest of efficiency, the post-fact discovery conference scheduled for **July 2, 2024**, at **2:30 p.m.**, will be held telephonically. The dial-in instructions are as follows: At **2:30 p.m.**, the parties shall call (888) 363-4749, and use access code 5123533.

The Clerk of Court is directed to terminate the pending motion at docket entry 31.

Dated: June 28, 2024
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE